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7 || Co-Lead Class Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

**IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

CLASS ACTION

**DECLARATION OF KELLY M. DERMODY
IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES AND
SERVICE AWARDS**

I, Kelly M. Dermody, declare:

1. I am an attorney licensed to practice in the Northern District of California. I am a partner at the firm of Lieff Cabraser Heimann & Bernstein, LLP (“LCHB”), Co-Lead Counsel for the Class Representatives and the Class. I have personal knowledge of the facts set forth herein and could competently testify to them if called as a witness.

2. I am a member in good standing of the bar of the State of California; the United States District Court for the Northern District of California; the United States District Court for the Central District of California; the United States District Court for the District of Colorado; the United States Courts of Appeals for the First, Second, Third, Fourth, Sixth, Seventh, and Ninth Circuits; and the United States Supreme Court.

LCHB Staffing in this Case

3. As the partner managing this case at LCHB from May 2012 onward, I paid considerable attention to ensuring that each LCHB partner on the file had specific areas of focus; that there was not duplication of efforts, especially among higher billers; and that projects were assigned to experienced lawyers with depth in the field who could effectively and efficiently execute the phenomenal amount of work this case demanded, as follows:

4. I asked partner Richard Heimann, LCHB’s foremost trial lawyer, to lead our trial efforts as trial first chair. In the course of discovery, Richard then selected key senior executives who we anticipated would undoubtedly be on our trial witness list for depositions he would first chair. Our LCHB lawyer team was cognizant of the need to provide Mr. Heimann with hot documents and key evidence for him to construct a trial plan. Mr. Heimann has spent much of his professional career in front of a jury, beginning as a public defender and then becoming an assistant district attorney, before joining LCHB. Mr. Heimann has successfully tried over 50 civil jury cases, highlighted most recently in this District in *Gutierrez v. Wells Fargo Bank*, No. C 07-05923 WHA (N.D. Cal.) (\$203 million verdict), and *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL No. 1827 (N.D. Cal.) (trial verdict against one defendant of \$87 million and settlements totaling over \$470 million). Mr. Heimann received a *California Lawyer* Attorney of the Year (“CLAY”) award for his efforts in both cases.

1 5. I asked partner Brendan Glackin, as LCHB's senior most subject matter expert in
 2 antitrust law on the case, to run point on the antitrust conspiracy and impact work, including the
 3 expert work of Dr. Edward Leamer, and the development of the motion for class certification,
 4 which relied heavily on a mastery of antitrust law and statistical proof. Mr. Glackin was the
 5 central lawyer in the middle of all counsel or expert statistical work, first chairing all related
 6 expert depositions, and managing all briefing related to expert statistical opinions. He first
 7 chaired the argument at both class certification hearings. Prior to joining LCHB in 2008, Mr.
 8 Glackin worked as an associate at Boies, Schiller & Flexner focusing on antitrust matters, and
 9 also worked as a Deputy Public Defender for Contra Costa County where he tried over twenty
 10 cases to juries. At LCHB, he is a key member of our Antitrust Practice Group where his most
 11 recent work includes serving on the trial team in the *In re TFT-LCD (Flat Panel)* antitrust
 12 litigation and representing the Charles Schwab family of funds and companies in the *In re LIBOR*
 13 rate manipulation case. Mr. Glackin leads LCHB's day-to-day work in the *In re Lithium Ion*
 14 *Batteries* antitrust litigation, as he did in *TFT-LCD*. In addition to working on numerous other
 15 antitrust matters, Mr. Glackin is Co-Chair of the Executive Committee of the Antitrust Section of
 16 the Bar Association of San Francisco; he also teaches trial advocacy for the National Institute of
 17 Trial Advocacy ("NITA") and the Practicing Law Institute (PLI). He is a frequent speaker and
 18 panelist on antitrust issues.

19 6. As the senior most subject matter expert on employment issues and compensation
 20 structures, I ran point on developing compensation system evidence. This included identifying
 21 key documents in discovery, developing common deposition questions for compensation and
 22 human resources witnesses, identifying deponents, taking fact depositions on compensation
 23 issues, working with Mr. Glackin on the development of statistical evidence from compensation
 24 and recruiting databases (common to employment class actions), and identifying, retaining, and
 25 running point on the expert work of compensation expert Kevin Hallock and his defense expert
 26 counterparts. I also led settlement efforts for LCHB and was involved in all major briefs and
 27 filings of any kind with the Court. My relevant background includes over 20 years of
 28 employment class action experience at LCHB, where I have also led or co-led at least 15 class

1 actions challenging compensation for, or hiring of, employees. I serve as Managing Partner of
 2 LCHB's San Francisco office and chair LCHB's Employment Practice Group, which recently
 3 was named a "2015 Litigation Department of the Year" from *The Recorder*. I am a member of
 4 the ABA Labor and Employment Section governing Council, and have served as co-chair of the
 5 Section's Annual Conference, Committee on Diversity in the Legal Profession, and Equal
 6 Employment Opportunity Committee. I was President of the Bar Association of San Francisco in
 7 2011-2012.

8 7. I assigned partner Dean Harvey, an antitrust litigation specialist, to run point on
 9 working with our clients on all aspects of the case, day-to-day discovery issues, and developing
 10 the plan and drafting (in conjunction with others) major briefs. Mr. Harvey was involved in
 11 virtually every aspect of the case, and first or second chaired almost every one of the vast number
 12 of discovery meet and confers. Mr. Harvey was frequently Plaintiffs' main point of contact with
 13 Defendants' counsel regarding discovery issues and joint filings (such as the many joint discovery
 14 reports and joint case management conference statements). Mr. Harvey first chaired several key
 15 depositions, defended two depositions of the class representatives, participated in the preparation,
 16 defending or taking of several expert depositions, and second chaired the depositions of the most
 17 critical fact witnesses, including Sergei Brin, Bill Campbell, Ed Catmull, Tim Cook, George
 18 Lucas, Larry Page, and Eric Schmidt. Mr. Harvey was the "front lines" person for assembling
 19 and marshalling the enormous factual and expert record presented in support of class certification
 20 and opposing summary judgment. Mr. Harvey also shared responsibility with Ms. Shaver for the
 21 document review projects of all class counsel firms. Prior to my time on the file, it is my
 22 understanding that Mr. Harvey was the initial point of contact for the clients, ran the pre-filing
 23 investigation of the case, and drafted the initial complaints. As part of this work, he investigated
 24 and interviewed a wide number of potential labor market experts and worked with Defendants on
 25 the plan for initial disclosures and early discovery responses. Prior to LCHB, Mr. Harvey was an
 26 associate at Boies, Schiller & Flexner, LLP, where he focused on antitrust and class action
 27 litigation, a law clerk for the Honorable James V. Selna of the Central District of California, and a
 28 law clerk for the Antitrust Division of the United States Department of Justice. Mr. Harvey

1 publishes and speaks frequently on antitrust and class action issues, including the antitrust
 2 treatment of employee poaching, the Class Action Fairness Act, concurrent antitrust criminal and
 3 civil proceedings, arbitration provisions, standard setting organizations, California class action
 4 practice and procedures, and recent developments in antitrust law. Mr. Harvey's 2006 article,
 5 "Anticompetitive Social Norms as Antitrust Violations," published in the *California Law Review*,
 6 received the William E. Swope Antitrust Writing Prize. In 2013, *The Recorder* recognized Mr.
 7 Harvey as one of 50 attorneys in California "whose early accomplishments indicate they will be
 8 tomorrow's top lawyers and leaders." He is currently Vice-Chair of the American Bar
 9 Association Section of Antitrust Law Business Torts & Civil RICO Committee.

10 8. I assigned partner Anne Shaver, while she was still a senior associate, to run point
 11 on document review for our voluminous class certification record and trial, as well as to manage
 12 the deposition defense work of our named plaintiffs. Ms. Shaver (or when she was not available,
 13 Mr. Harvey) chaired weekly meetings with attorneys across the co-counsel firms who were
 14 responsible for reviewing documents to ensure that key evidence was efficiently gathered, that
 15 important new information (e.g., jargon or witnesses) was broadly shared with reviewers, and that
 16 there was a mechanism of quality control through communication and feedback. Given her
 17 extensive work with employee clients and employee depositions, Ms. Shaver trained all attorneys
 18 scheduled to prepare and defend named plaintiffs' depositions on the likely areas of questioning
 19 and hot spots for examination. She also first chaired four fact witness depositions, and second
 20 chaired several others. Prior to LCHB, Ms. Shaver served as law clerk to the Honorable Betty B.
 21 Fletcher of the United States Ninth Circuit Court of Appeals, and served as a death penalty law
 22 clerk in the Contra Costa County Public Defender's Office. She is currently a member of the
 23 coordinating committee of the ABA's Equal Employment Opportunity Committee. She has been
 24 recognized as a "Rising Star for Northern California" by Super Lawyers for each of the past three
 25 years.

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2 **Out-Of-Pocket Costs Incurred By Class Counsel**

3 9. To advance this litigation, Class Counsel incurred costs totaling \$4,884,655.29
 4 from inception to date. Due to reimbursements of costs totaling \$3,699,844.31 through the earlier
 5 settlement with LucasFilm, Pixar, and Intuit, the remaining unreimbursed costs for the case up
 6 through May 1, 2015 are \$1,184,810.98. Those costs consisted of expenses submitted to the joint
 7 litigation fund of Class Counsel (the “Litigation Fund”, which Class Counsel supported through
 8 periodic contributions) as well as costs paid separately by LCHB, as set forth below, and by the
 9 other Class Counsel firms as set forth in their declarations.

10 10. The Litigation Fund was designed to pay common external costs, such as expert
 11 fees, court reporting and videographer expenses for depositions, and vendor fees for our
 12 electronic platform for review and storage of documents produced in the course of discovery.
 13 LCHB has maintained records and accounting for the Litigation Fund since it was established
 14 early in the case.

15 11. In total, LCHB contributed \$1,998,386.67 to the Litigation Fund. In addition,
 16 LCHB paid an additional \$399,142.79 for certain expenses that were not paid for by the
 17 Litigation Fund, including certain expert, database, and other common costs incurred prior to the
 18 establishment of the Litigation Fund, as well as LCHB-specific costs such as electronic computer
 19 research, document printing and copying, faxing and mailing charges, telephone service, case-
 20 related travel for Plaintiffs, experts, and witnesses, and other necessary expenses. These expenses
 21 are summarized in a chart provided in **Exhibit 1**. The expenses incurred by the Litigation Fund
 22 are summarized in a chart provided in **Exhibit 2**.

23 12. The detail of LCHB-specific costs are provided in **Exhibit 3**.

24 13. Invoices are provided as follows. **Exhibit 4** collects invoices from experts and
 25 economic consultants. **Exhibit 5** collects invoices from mediators. **Exhibit 6** collects invoices
 26 regarding depositions (reporters, videographers, and transcripts). **Exhibit 7** collects invoices
 27 regarding Class Counsel’s document review platform. **Exhibit 8** collects remaining invoices and
 28 receipts, such as computer research, printing costs, and travel expenses.

1 14. LCHB incurred the costs described herein on behalf of Plaintiffs on a contingent
2 basis. To date, \$1,775,147.98 has been reimbursed through prior settlements. These costs are
3 reflected in LCHB's books and records.

4 15. I have reviewed the expenses reported by LCHB in this case that are included in
5 the Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards, and I affirm
6 that they are true and accurate. In addition, at my direction, my partner Dean Harvey reviewed
7 the back-up materials for the billed costs to confirm they are reliable. At my direction, Mr.
8 Harvey has redacted from the back-up materials financial information (such as a credit card
9 number) or unrelated billings (such as line items from a credit card statement) that do not pertain
10 to this case.

11 16. A review of the cost detail reveals two things: (1) this was an expensive and high-
12 risk case from the standpoint of the needed expert, deposition, and other cost investments; and (2)
13 LCHB managed costs frugally, as evidenced by the employee receipts for late night filings
14 supported by meals from places like Subway and rides home after 10 p.m. provided by regular
15 taxi service. Examples of such receipts are found at **Exhibit 9** (attorney Joseph Forderer taking
16 taxis of \$13.10-14.70 over 5 nights of working late, and having one meal for \$5.97); and **Exhibit**
17 **10** (paralegal Terence Desouza working late for a 10:00 p.m. filing with Dean Harvey and
18 expensing a meal at Subway for \$5.27).

The Time Invested By LCHB

20 17. The separate Declaration of Brendan P. Glackin sets forth in detail the work
21 contributed by LCHB in this case. Below I describe our firm's timekeeping and what we have
22 submitted to the Court.

23 18. As of May 7, 2015, my firm had expended 23,458.20 hours on this matter, with
24 work still continuing. This time excludes timekeepers who billed less than 10 hours to this case,
25 thereby excluding time billed to the file by senior partners Elizabeth J. Cabraser, Steven E.
26 Fineman, Robert J. Nelson, and Jonathan D. Selbin, among others.

27 19. Attached hereto as **Exhibit 11** is a true and correct summary by individual of the
28 hours, billing rate, and lodestar for each biller's work on this matter through May 4, 2015. The

1 firm's total lodestar for these hours amounts to \$11,476,957.50. This reflects time recorded
 2 contemporaneously for work completed, consistent with LCHB's *Firm Policy Manual* "Time-
 3 Keeping Policy" that requires timekeepers to keep time sheets on a daily basis, and to submit
 4 them by the close of each business week. LCHB's accounting department runs a regular time
 5 report that lists timekeepers without time in the system for any given week. I am provided that
 6 report and personally follow up with tardy attorney timekeepers, and instruct staff managers to
 7 follow up with any tardy attorney staff. The firm does not abide late timekeeping, and we advise
 8 employees, 'Failure to comply with the Firm's timekeeping policy may be taken into account in
 9 connection with promotions, raises, and bonuses, and may subject the delinquent timekeeper to
 10 discipline, up to and including termination.'

11 20. Attached hereto as **Exhibit 12** is the complete detail time for the work performed
 12 in this case. Redactions have been made where necessary to protect attorney-client privilege, the
 13 names of class members, documents or filings that are confidential and under seal, or undisclosed
 14 work product (such as consultation with a non-testifying expert).

15 21. The rates set forth in **Exhibit 11** are my firm's current billing rates and are
 16 supported by the extensive and specialized experience in these types of cases and recognized
 17 expertise described. Our rate structure has been paid to our firm by hourly-paying clients. In
 18 addition, our rate structure has been approved by numerous Courts. *See, e.g., Brazil v. Dell Inc.*,
 19 2012 U.S. Dist. LEXIS 47986 (N.D. Cal. Apr. 4, 2012); *In re Bank of America Credit Protection*
 20 *Marketing & Sales Practices Litig.*, No. 11-md-2269 THE (Dkt. 96) (N.D. Cal. Jan. 16, 2013);
 21 *Fleming v. Kemper Nat. Services, Inc.*, 373 F. Supp. 2d 1000, 1012 (N.D. Cal. 2005); *Grays*
 22 *Harbor Adventist Church Sch. v. Carrier Corp.*, 2008 WL 1901988, at *3 (W.D. Wash. Apr. 24,
 23 2008); *Pelletz v. Weyerhaeuser Co.*, 2009 U.S. Dist. LEXIS 1803, at *7 (W.D. Wash. Jan. 9,
 24 2009); *Berger v. Property ID Corporation*, CV 05-5373-GHK (Cwx) (C.D. Cal.); *White v.*
 25 *Experian; Information Solutions, Inc.*, 2011 WL 2971957, * 3 (C.D. Cal. Jul. 15, 2011); *Lonardo*
 26 *v. Travelers Indem. Co.*, -- F. Supp. 2d --, 2010 WL 1416698, at *22-23 (N.D. Ohio Mar. 31,
 27 2010); *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, No.
 28 Civ.A. 99-20593, MDL No. 1203, 2003 WL 21641958, at *9 (E.D. Pa. May 15, 2003).

1 22. I have personal knowledge of the hourly rates charged by other attorneys with
2 comparable experience as well as the attorneys within the firm who worked on this matter. Based
3 on that information, I believe that these rates are fully consistent with the market rate in the San
4 Francisco Bay Area for attorneys with comparable expertise, experience and qualifications, and
5 that they are comparable to rates of attorneys specializing in complex litigation around the
6 country. Based on the information I have, I believe that the rates charged by LCHB are
7 reasonable and appropriate fees for those with comparable expertise, experience, and
8 qualifications.

LCHB's Work For The Class Will Continue

10 23. After this fee submission is completed, the case work will not be over. LCHB will
11 continue to invest time and incur costs over the next several months as class counsel prepares the
12 motion for final settlement approval, communicates with Class members regarding the settlement,
13 prepares for and attends the hearing on settlement approval, and monitors the implementation of
14 the settlement. Thus, the final lodestar and cost amounts will be higher than reported in this
15 declaration.

The Risk and Complexity Involved in the Litigation

17 24. Class Counsel prosecuted this action without any assurance of payment for their
18 services, litigating this case on a wholly contingent basis in the face of significant risk. Large-
19 scale antitrust and employment cases of this type are, by their very nature, complicated and time-
20 consuming. Any lawyer representing large numbers of affected employees in such actions
21 inevitably must be prepared to make a tremendous investment of time, energy, and resources.

22 25. The facts and circumstances of this case presented numerous and substantial
23 hurdles to a successful recovery. All seven Defendants challenged the pleadings with a motion to
24 dismiss, have consistently denied the existence of a conspiracy, and vigorously contested class
25 certification. Obtaining class certification in a case of this nature is extremely difficult and
26 resource-intensive.

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1 I declare under penalty of perjury under the laws of the United States and the State of
2 California that the foregoing is true and correct to the best of my knowledge and that this
3 declaration was executed in San Francisco, California on May 7, 2015.

4 /s/ Kelly M. Dermody

5 Kelly M. Dermody

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